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IN *Patterson* v. *Crawford*, the opinion in which will be found elsewhere in this number, the court decides, in accordance with the principle established in *Walker* v. *Commonwealth*, 18 Gratt. 13, that where a debtor's property has been subjected for the payment of his debts, but, after sale, the fund perishes while in the hands of the law, by reason of the default of the officer in whose possession the fund is, the debt is satisfied, *pro tanto*, and the loss falls upon the creditors.

It was further held, without citation of authority, that where there are priorities among the several creditors at whose suit the property is subjected, and a portion of the fund is saved, the same preference is to be observed as if there had been no loss—in other words, the loss must be borne in the inverse order of the priorities, and equality is not equity in such case.

The decision seems right on principle. We have a somewhat shadowy impression that a similar decision on the latter point has been made in Virginia, but are unable to cite the case. We shall be glad if some subscriber will send us the reference, if there be such a case.

Hurst v. *Leckie*, found among the cases reported in full elsewhere, was briefly commented upon in our December number. Among other interesting questions discussed in the opinion, the court deals at length with the question of the sufficiency of a certificate of acknowledgment, which is irregular in certifying the official character of the officer making it. The conclusion reached is, that in Virginia, since the adoption of the statute prescribing the form of such certificate, the official character of the officer must appear on the face of the certificate, and cannot be shown by parol. But that such official character does sufficiently appear when the officer describes himself as a "commissioner in chancery for the city of Buena Vista, in the State of Virginia," though he fail to state of what court he is commissioner—since

the court judicially knows that there is but one court for that city—the corporation court.

It would seem that even had the certificate been fatally defective, and the registry of the deed of trust invalid, the rights of the trustee and those claiming under the deed would have been superior to those of the attacking creditors at large, so far as concerned the personal property in the actual possession of the trustee at the time of suit brought. Though the deed be void for lack of registry, the transaction may still operate as a valid pledge of the personal property, actually delivered to the trustee. *Clark* v. *Ward*, 12 Gratt. 440.

Whether creditors who have no liens, may attack a conveyance of the debtor's property solely on the ground of such non-registry, is, we believe, an open question in this State. Professor Minor expresses the opinion that an unregistered conveyance stands in this respect on the same footing as a fraudulent one, and is, therefore, subject to attack by creditors at large. 2 Minor's Inst. (4th ed.), 963–964. *Sed quere.*

THE opinion in *Marshall* v. *Valley R. Co.*, which we publish in full, is chiefly devoted to a discussion of facts, and therefore calls for no special comment. There is a single expression in the opinion to which attention is called, lest it prove misleading. In discussing the liability of the railroad company, defendant, for the condition of the temporary road constructed by it under permission of the county authorities, the court says: "It is true that a traveller injured upon a public highway has, in this State, no right of action against the county authorities." The court doubtless meant to say that the traveller had no cause of action against the *county*—a proposition established in this State, in *Fry* v. *Albemarle County*, 86 Va. 195—or the court used the expression "county authorities" as representing the county in its corporate capacity. It is believed that there has been no decision in this State upon the question whether a county official is or is not individually responsible for injury to a traveller caused by the negligence of the official. It is generally held, however, that where the duties of the road overseer, or other official, are by statute specifically defined, and he has the means, or is able to procure them, for carrying out those duties, he is liable at the suit of private individuals for injuries arising from his official neglect. *Hoover* v. *Barkhoof*, 44 N. Y. 113; *County Com'rs* v. *Duckett*, 20 Md. 468, 83 Am. Dec. 557, and note collecting the authorities; *Robinson* v. *Chamberlain*, 34 N. Y. 389, 90 Am. Dec. 713, and note.

THE decision of the Virginia Court of Appeals in *Edmunds* v. *Hobbie Piano Co.*, published elsewhere in full, is well worth the attention of the bar. The court for the first time construes that provision of section 2877 of the Code, known as the "Trading as Agent" statute, declaring that "if any person transact such business [*i. e.*, as a trader] in his own name, without any such addition [as "agent," "factor," "and company," etc.], all the property, etc., acquired or used in such business shall, as to the creditors of any such person, be liable for the debts of such person"—save that this shall not apply to an auctioneer or commission merchant, doing business under a license as such.

The ruling is, that where goods are shipped to or left with an ordinary trader (not a regularly licensed auctioneer or commission merchant) to be sold for account of the owner, such goods become at once subject to be seized on execution against the trader to whose possession they are entrusted. And, it may be added, as clearly deducible from the statute, that it is immaterial whether the creditors have knowledge of the real situation or not.

The decision seems to be clearly within both the letter and spirit of the statute. The principle thus established, while working a hardship in individual cases, will serve a valuable purpose in defeating attempted frauds upon creditors—in one direction by preventing traders from securing false credit upon the show of assets not their own, and in another by obviating fraudulent collusion between the trader, who in fact owns the goods levied upon, and third persons intervening as claimants, in confederation with him.

Another ruling in the same case is, that personal property hired to such a trader, or left on storage with him, is not "property acquired or used in such business," and is, therefore, not liable to be taken for his debts.

WE observe from press reports of the proceedings of the Virginia legislature now in session, that a bill has been introduced to repeal the existing law regulating admission to the bar, and to restore the law to the miserable condition in which it was previous to the adoption of the present excellent regulations. The existing statute has done so much for the advancement of the profession in this State, and has met with such cordial and widespread endorsement from bench and bar, that it is inconceivable that any intelligent lawyer, in the legislature or out of it, could bring himself to the support of such a measure as that now

proposed. The present statute requiring candidates for admission to the bar to possess some acquaintance with the elementary principles of the law—and the judges of the Court of Appeals, who constitute the examining board, have never required more—is intended for the protection of the public against ignorant and corrupt attorneys, and is not designed, as uninformed laymen believe, to limit the number of practitioners, for the benefit of those already admitted. No intelligent person, lawyer or layman, will deny that the unscrupulous shyster ranks among the dangerous elements in a community; and it is no less true, that the shyster is not the educated lawyer—he is the offspring of professional ignorance and an unenlightened conscience. As the public school system is based upon the idea that the education of the people is the remedy for suppression of crime, for the cultivation of patriotism and the virtues that constitute good citizenship, so, in the narrower circle of professional life, professional education is the safeguard against shysterism and its attendant evils of trickery and thievery in the ranks of the legal profession.

We do not believe such a bill as that proposed needs any opposition outside of the halls of the legislature itself, but lest the non-professional members of that body be led into support of the measure by misunderstanding the purpose and effect of present regulations, members of the bar throughout the State should see to it at once, that their local representatives shall be fully informed on the subject.

THE case of *N. & W. R. Co.* v. *Stevens*, reported in full elsewhere, establishes a new principle in Virginia, in connection with the master's liability for the personal safety of his servant. The present court has time and again affirmed the established rule that the cardinal duties of the master touching safe appliances, a safe place to work, competent fellow-servants, etc., cannot be assigned to another, so as to relieve the master of liability for the omission or the negligent performance of such duties. The principal case establishes a striking exception to this rule, to-wit, that these duties, or at least that of providing proper appliances, *may* be delegated to an independent contractor, provided such delegation is usual among those engaged in a similar business, and due care has been exercised in employing a reputable contractor. The decision is doubtless sound, as applied to the particular facts. But the principle is a dangerous one, and should not be extended further. If a railroad company may rid itself of liability to its servants, in the matter of suffi-

cient bridges, by delegating the duty of erecting bridges to an independent contractor, why may it not likewise escape liability for the condition of its entire track and rolling stock by committing the care of these to an independent contractor? The answer would be, as gathered from the opinion, that such duties as keeping the track in condition, and the inspection and repair of rolling stock, are not ordinarily delegated to independent contractors, while the erection of bridges is. This may suggest to the present age of trusts and combinations, that railroad companies may, by convention, extend the custom of employing independent contractors to the maintenance of the track and the inspection and repair of locomotives, cars and appliances generally, and thus escape any liability whatsoever for personal injuries to their employees, due to insufficient appliances.

The established rule is that one cannot escape liability for neglect of a duty imposed upon him by law, by delegating that duty to an independent contractor. This principle was strikingly enforced in the balloon case (*Richmond etc. St. Railway Co.* v. *Moore*, 94 Va. 493), where the present court held that if the independent contractor undertook to perform a duty which the law imposed as a personal duty upon the employer, the negligence of the contractor was the negligence of the employer. If the defendant in that case had offered proof that it was customary for street railway companies, when employing æronauts to make balloon ascensions in parks under control of such companies, to permit such æronauts to make ascensions in their own way, as independent contractors, and had thus sought to escape the liability which the law exacts of those who invite others upon their premises, doubtless the court would have listened with scant patience to such defense. How the principle case is to be reconciled with the balloon case, or precisely where the line is to be drawn between those duties which may be assigned to an independent contractor, and those which may not, it is not easy to affirm. It is unfortunate that the court in the principal case did not go more deeply into this interesting and important question.

It is probable that the true distinction is (or should be) this: Where the particular duty is one which those engaged in business of that character do not ordinarily perform, and are not ordinarily equipped to perform—as, for example, the original construction of appliances, such as the building of locomotives and bridges, which are generally furnished, ready made, by special manufacturing companies, and are outside the operations of ordinary railroad companies—then the con-

struction of such appliances may be delegated to independent contractors; and the railroad company, if itself guilty of no negligence in the selection of the contractor, or otherwise, is not liable for the negligence of the contractor. But where the duty is of such a character that its proper performance is within the resources of those engaged in that business as ordinarily conducted—such as the inspection and repair of track and rolling stock, the selection and oversight of fellow-servants, the making and enforcement of proper rules—then the duty cannot be delegated to an independent contractor, so as to relieve the employer of liability for its negligent performance.

If a railroad company purchases a locomotive from a reputable manufacturer, and exercises due care in its selection, no responsibility could attach to the company for the death of an engineer employed to operate it, caused by the explosion of the boiler, though due to negligent construction. The same result ought to follow, though the locomotive were built by the manufacturer on the special order of the company—assuming, of course, that the only negligence proved be that of the manufacturers. In each of these cases the railroad company has exercised the ordinary care required of it. If this be so, then equally free from negligence is the same company when it employs a reputable contractor to construct a bridge over which its trains are to run.

Yet, it is apprehended that if, as a part of the contract of purchase of the locomotive, and of the erection of the bridge, the contractor engages to properly inspect and keep them in repair during a particular period, and a servant of the company is injured by reason of a neglect of this duty, the principle thus established by the court would not relieve the railroad company of liability.

It is to be hoped that when this question again comes before the court, the doctrine will not only not be extended beyond the narrow confines of the actual decision in the principal case, but that the court will announce some definite rule on the subject, for the guidence of the bar and the trial courts.